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Todd Monson
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Dear Mr. Monson:

On November 21, 2014 you filed an Objection to the Village at Wolf Creek Access project on the Rio Grande National Forest. The legal notice for this project was published in the Valley Courier on November 21, 2014. Your objection was timely and I have reviewed your objection and supporting documentation in the objection record pursuant to the 36 CFR 218. Your objection was combined with the objections of other individuals. My written response, as required by 36 CFR 218.11(b)(1), can be found below.

OVERVIEW OF PROJECT

Purpose and Need: The Purpose and Need for Action is to allow the Leavell-McCombs Joint Venture (LMJV) to access its property to secure reasonable use and enjoyment thereof, as provided by the Alaska National Interest Lands Conservation Act (ANILCA), and Forest Service regulations, while minimizing environmental effects to natural resources within the project area. The legal entitlement is defined by ANILCA and Forest Service regulations as a right of access to non-Federal land within the boundaries of the National Forest System (NFS).

Alternatives: Three alternatives were analyzed in detail in the Final Environmental Impact Statement (FEIS), including:

- **Alternative 1: No action.** Under this alternative, there would be no additional road access provided to the ±288-acre private land inholding.
- **Alternative 2: Proposed Action / Selected Alternative):** The project, as proposed in the Draft Record of Decision (DROD), would authorize a land exchange between the United States and the LMJV, to accommodate year round access to the private inholding. The LMJV would convey approximately 177 acres of privately held land to the Rio Grande NF, in exchange for approximately 205 acres of NFS land managed by the Rio Grande NF.
- **Alternative 3: ANILCA Road Access:** Alternative 3 was designed to fulfill the Forest Service's obligations under ANILCA, by providing an access road across NFS lands between Hwy 160 on the north and the private land inholding on the south. The Tranquility Road would be extended east ±529 linear feet across NFS lands to provide limited, seasonal access to the inholding.



RESPONSE TO ISSUES & SUGGESTED REMEDIES

Issue 1: Objectors allege the project would violate the Endangered Species Act (ESA) and Agency policy on maintaining/enhancing linkage areas due to impact to Canada lynx and the Wolf Creek Lynx Linkage area. Specifically, impacts from disturbance and fragmentation of lynx linkage areas, increased traffic along U.S. 160, increased human activity, increased development, and cumulative impacts from salvage sales and recent fires. In addition, there is concern that proposed mitigation measures are insufficient to protect lynx.

Issue 1 Response: Although the proposed action would result in habitat loss and degradation, the analyses and reports regarding project effects on Canada lynx adequately support the draft decision document, and no violations of law, regulation, or policy are evident.

Under ESA, Section 7 consultation with United States Fish and Wildlife Service (USFWS) concludes that no critical habitat has been designated for Lynx in Colorado and none will be affected (pp. 4-5). A thorough evaluation of habitat linkage, traffic-related mortality, changed conditions of habitat, connectivity, fragmentation, and cumulative influences from wildfire, forest insects, timber operations, and other developments are addressed in the BA, supplemental BA, BO, and FEIS. The USFWS determined that the land exchange will not result in direct effects to lynx and acknowledges that subsequent development of Wolf Creek Village, while not under the authority of the Forest Service, is an indirect effect which is likely to lead to adverse effects on lynx. While the indirect effects are expected to cause some habitat loss and degradation, and temporarily increase lynx mortality, those effects are fully disclosed. The analysis determined that habitat connectivity for lynx will be maintained at least to the level specified by the Southern Rockies Lynx Amendment (SRLA) (which amends the Revised Land and Resource Management Plan, Rio Grande National Forest, 1996), and the incidental take is authorized by the USFWS under ESA. The SLRA provides that its objectives are statements in a land management plan, describing desired resource conditions, and intended to promote achieving programmatic goals. The SLRA defines guidelines as particular management actions that should be used to meet an objective found in a land management plan. The rationale for deviations may be documented, but amending the plan is not required. In addition, non-discretionary mitigation measures shall be applied, under the authority of the USFWS, to offset the expected temporary increase in lynx mortality due to traffic associated with Wolf Creek Village. Given these considerations, the USFWS concluded that the proposed land exchange is not likely to jeopardize the continued existence of lynx in the contiguous U.S. population segment.

Issue 2: Objectors are concerned about impacts of the project to bear, bobcat, mountain lion, elk, deer, pine marten, Rio Grande Cutthroat trout, and other species due to disturbance and fragmentation of migration corridor and habitat, increased traffic along U.S. 160, increased human activity, and increased development.

Issue 2 Response: The analyses and reports regarding project effects on wildlife, fish, and rare plants adequately support the draft decision document and no violations of NEPA or National Forest Management Act (NFMA) of 1976 are evident.

As documented in the FEIS, Biological Assessment (BA), Biological Opinion (BO), wildlife Biological Evaluation (BE)/Specialist Report, and botanical BA/BE, a thorough analysis was



conducted for all applicable Rocky Mountain Regional Forest Sensitive Species (RFSS) and Management Indicator Species (MIS) species. The objectors also raised concerns about other wildlife species, namely bear, bobcat, mountain lion, and moose. However, these species were not analyzed in the Wildlife BE and Specialists Report or the FEIS, as analyses of these species is not required by the NFMA. Instead, the analysis of wildlife MIS is intended to provide a means to evaluate effects on species viability as a whole. Thus, no additional analyses are warranted or required.

Issue 3: Objectors allege that the visual simulation analysis in the FEIS is inaccurate because it erred in considering the scenic easement applied to the entire development parcel, degrading the scenic view from both Highway 160 and the ski area.

Issue 3 Response: The simulations provide an accurate depiction of the potential visual impacts (size and scale) of private land development, from both the Wolf Creek Ski Area (WCSA) and Hwy 160. The fact that all buildings were simulated to be no higher than 48 feet is irrelevant for the purposes of this analysis, as even a discriminating eye cannot perceive a two foot height difference in buildings from this viewpoint. If LMJV applies a consistent architectural theme across the entire development, it would comply with both requirements of the existing Scenic Easement, and more importantly, a Planned Unit Development (PUD) from Mineral County.

As discussed in Section 4.10.1.1 (p. 4-152) of the FEIS, it is important to note that the visual simulations prepared to support this analysis are simply graphical tools. They are designed to aid the Decision Maker, Forest Service resource specialists, and the public in gaining an understanding of the size and scale of conceptual, future development on private lands that may, or may not, occur as an indirect result of Forest Service approval for either a land exchange or a road access corridor. These visual simulations are accurate graphical representations that are based on a *conceptual level of planning that has been prepared for the private lands at this time*. Future development that may occur on private lands as an indirect consequence of approval of a land exchange is the jurisdiction of Mineral County, and *any ensuing development may, and likely would, deviate from the current conceptual plan that was utilized as the basis for the visual simulations*.

Citation Table

Document Name	Location in Record/Document	Relevance
FEIS Vol. 1 Record # 72001	Chapter 3 Affected Environment, Section 3.10 Scenic Resources pp. 3-106 to 3-112	Scenic Resources; scenic easement
FEIS Vol. 1 Record # 72001	Chapter 4 Environmental Consequences, Section 4.10 Scenic Resources, pp. 4-151 to	Scenic Resources, Visual Simulations, Critical Viewpoint Analysis, Scenic



Document Name	Location in Record/Document	Relevance
	4-160	Easement Applicability
FEIS Vol. 1 Record # 72001	Chapter 8, Visual Simulations 4.10-3 & 4.10-4, pp. 8-33 to 8-34; Visual Simulations 4.10-6 through 4.10-8, pp. 8-36 to 8-38	Visual Simulations

Therefore, in preparing the visual simulations, some basic assumptions were made. In compliance with the Scenic Easement (discussed below) as well as Mineral County requirements, all simulated buildings are 48 feet in height or less. Note that a building height of 48 feet generally translates to three stories (accounting for the roof). Also, non-vegetated buffers surrounding buildings and structures are approximately 105 feet (one-and-a-half times the height of the tallest trees in the project area), while roads are assumed to have non-vegetated buffers of 50 feet on either side. Visual simulations of the conceptual, future development on private lands from the Hwy 160 Critical Viewpoint are based on the *foreground* viewing distance. Visual simulations from the WCSA Critical Viewpoint are based on the *middle-ground* viewing distance.

Footnote #39 on p. 4-152 indicates that:

Mineral County Zoning Regulations as amended on April 10, 1996 state that the maximum building height for a PUD is 50 feet. If Alternative 2 – the Land Exchange – is approved, the private landowner may choose to seek a variance from Mineral County Zoning Regulations for maximum building heights, where the Scenic Easement does not apply.

Factoring in the potential for a building height variance on the proposed private parcel would be speculative at this point of analysis, and the modeling is still an accurate representation of potential effects. These simulations identified two critical viewing points (pp.4-151, 152) that potentially describe the maximum viewshed effect encountered by travelers and residents and were applied to private land for analytical purposes only. No Scenic Integrity Objective (SIO) can be applied to private land and under Alternative 2; modifications that occur on private land are not subject to the Forest Service Scenery Management System (SMS) or Recreational Opportunity Spectrum (ROS). The basis for the simulation analysis is for providing an estimate of the conditions which may include indirect effects of potential development in the future regarding the scenic viewshed. This analysis does not impose any standard or restriction on private property (pp.3-106, 3-107).

Issue 4: Objectors are concerned that the proposal would increase traffic volume and congestion along Highway 160.



Issue 4 Response: The objector failed to raise the issue in comments previously submitted during a public comment period, and the issue is not based on new information (36 CFR 218.8(c)).

Issue 5: Objectors are concerned the proposal would adversely impact soil quality, resulting in increased soil erosion, which in turn, would reduce water quality, and damage riparian habitat and vegetation.

Issue 5 Response: The US Forest Service would not violate the Rio Grande National Forest Revised Land and Resource Management Plan through authorization of this land exchange. Also, impacts to soils, water quality, riparian habitat and vegetation are addressed in the FEIS. Lands newly acquired by the US Forest Service in the land exchange would be managed under the Rio Grande National Forest Revised Land and Resource Management Plan.

The US Forest Service responded to this comment to the DEIS in the FEIS, in Response 16 p 123 stating: *“The Action Alternatives would not violate the Forestwide Standards and Guidelines for Riparian Areas or the guidance in the Watershed Conservation Practices Handbook. Specifically, if the Forest Service selects one of the Action Alternatives, they would authorize either a land exchange (Alternative 2), or the construction of an access road (Alternative 3), not a development. Under Alternative 3, the access road crossing Forest Service lands would be constructed in accordance with Forest Service standards. Based on the Concept Development Plans for the Moderate and Maximum Density Development Concepts, the access road across Forest Service lands under Alternative 3 would have one culvert and three bridges where the roadway would cross streams and/or wetlands, and retaining walls would be used to reduce the area of disturbance created by grading.”*

The proposed action, a land exchange, would not violate the Forestwide Standards and Guidelines for Riparian areas or the Watershed Conservation Practices Handbook. By selecting the proposed action, the Forest Service would be authorizing a land exchange, not a development. Forest Service lands, including those acquired as a result of the land exchange, would continue to be protected by the Forest Plan, and Best Management Practices would be employed to protect wetlands and aquatic resources. Wetlands on the private parcel, following the land exchange, would be protected by the Clean Water Act, which is administered by the U.S. Army Corps of Engineers (COE); and, impacts to wetlands would require mitigation as determined by the COE.

Objectors make general comments on the impacts to soils, water quality, riparian habitat and vegetation. The FEIS addresses these concerns as follows:

- The FEIS estimates the direct and indirect effects of the development concepts of Alternative 2 on soil resources (Table 4.3-2), discusses how the indirect effect of construction and maintenance of buildings and roadways could induce soil erosion (Section 4.3.1.2.2), and presents mitigation measures for impacts to soils (Section 4.3.2).
- The FEIS discusses the direct and indirect effects of non-point source and point source pollution of the development concepts of Alternative 2, including the impact of stream diversion with return flows and storm water runoff, on water quality and stream health (Sections 4.1.21.1, 4.1.2.2 & 4.1.2.3).



- The FEIS discusses and quantifies the direct and indirect effects of the development concepts of Alternative 2 to riparian/wetland vegetation and other vegetation types (Sections 4.6.1.2.1 & 4.6.1.2.2).
- Table 2.6-2 of the FEIS summarizes the direct effects of Alternative 2 on soils, water and vegetation resources, and Table 2.6-3 summarizes the indirect effects of the development concepts of Alternative 2 on soils, water quality, and riparian and other vegetation types.

Issue 6: Objectors raised concerns regarding the potential cumulative and irreversible impacts to wetlands and water quality in the headwaters of the watershed, and the impacts on the water quality of downstream communities.

Issue 6 Response: The US Forest Service complies with NEPA by providing a qualitative analysis of wetlands. It is reasonable to conclude that a quantitative analysis would be conducted at the development stage on private lands appropriate government entities.

The *Alterations to Wetland Hydrology*, discussion in FEIS Vol. 1, Sections 4.7.1.2.2 and 4.7.1.3.1 provides a relative, *qualitative* comparison of potential impacts to wetlands from disruptions to groundwater flow and increased runoff resulting from impervious surfaces. As described in the FEIS, development concepts with more impervious surfaces have a greater potential to cause alterations to wetland hydrology. The potential disruptions to groundwater hydrology from buildings and belowground structures is related to their size, location, foundation depths relative to the groundwater elevation, direction of groundwater flow, and other factors; as well as details of building design and drainage that could mitigate for these impacts.

Following Forest Service approval of the land exchange, the proponent would submit a PUD application to Mineral County. Determining any potential groundwater hydrology impacts from a future development, which is neither designed nor permitted, would be speculative; and, it is not necessary to inform the decision maker or the public. Moreover, *quantifying* the impacts to wetlands requires a level of investigation, which is reasonable to conclude, would be completed at the development phase. Detailed hydrologic investigations and completed development plans, including the design of building foundation drainage systems, complete storm water management plans, and snow storage plans, would be necessary to quantify (calculate) the potential impacts.

Although the final size, location, and design of buildings are not yet known, FEIS *qualitatively* evaluates the potential for disruptions to groundwater hydrology of wetlands based on the general locations and sizes provided in the concept development plans. The impacts from hotel and residential housing foundations, underground parking, and the roadway underpass below the ski lift are specifically discussed under the alterations to wetland hydrology section for the low, moderate, and maximum density development concepts. Further discussion of potential impacts to groundwater hydrology of wetlands is provided in Chapter 4.2. As discussed in the FEIS (Section 4.7.2.2), highly effective design features can be incorporated into the development plans to reduce the impacts to wetlands and their hydrology.

Objectors make general comments regarding impacts to wetlands, watersheds, and water quality. The Cumulative Effects and the Irreversible and Irretrievable Commitment of Resources Sections of FEIS Vol. 1 regarding wetlands (Sections 4.7.3 and 4.7.4), and surface water (addresses water



quality – Sections 4.1.5 and 4.1.6) address the cumulative effects. Detailed discussions of potential indirect effects to surface water and wetlands are contained in FEIS Vol. 1, Sections 4.1 and 4.7, respectively. The impact analysis regarding indirect effects to groundwater resources, contained in Section 4.2 is also relevant to the discussion of wetlands.

As discussed in FEIS Vol. 1 Section 4.1.5.1, cumulative effects to water quality, degradation of water quality chemistry due to the discharge of waste water treatment plant (WWTP) effluent to North Pass Creek by the WCSA, and non-point source pollution due to runoff from Hwy 160, are expected to continue in the development stage. Additional future non-point source impacts to water quality in both North and South Pass Creeks may result from the potential for widespread tree mortality, and/or harvesting on the private land parcel, and adjoining NFS lands due to the spruce beetle infestation.

Another significant cumulative impact to water quality could be due to the potential expansion of the WCSA. The WCSA 2013 Conceptual Revised Master Development Plan (MDP), which outlines future ski area expansion, has been accepted by the Rio Grande NF; however, it is still pending a decision by the San Juan NF. Expansion of the ski area could result in more skier visits during the ski season, which could result in increased WWTP discharge to North Pass Creek.

Another significant cumulative impact to water quality could be due to ongoing operations of the Colorado Department of Transportation (CDOT) maintenance facility on Hwy 160. As described in Section 3.1, the maintenance facility and Hwy 160 are a source for non-point source pollution. Ongoing non-point source pollution discharging to North Pass Creek from the maintenance facility, as well as Hwy 160, could combine with potential temporary and ongoing non-point source pollution from the planned Village to, therefore, create a cumulative effect. Mitigation measures for the Village have been identified, and non-point source pollution is expected to be minor, resulting in negligible cumulative effects.

In regards to wetlands, cumulative effects are discussed in FEIS Vol. 1, Section 4.7.3. Projects with potential cumulative effects to wetlands in the Analysis Area include the construction and operation of the WCSA; construction, operation and maintenance of U.S. Highway 160; and the construction, operation, and maintenance of the CDOT maintenance facility.

FEIS Vol. 1, Section 4.7.4 discusses irreversible and irretrievable commitment of resources for wetlands. Any impacts to fens are irreversible and irretrievable, in accordance with Forest Service policy. As stated in the Region 2 supplement to FSM 2600 Management of Fish and Wildlife Habitat (Chapter 2630), “because the rate of accumulation of peat in fens is so slow and the species associated with fens are so unique, these ecosystems are difficult to reclaim and are essentially irreplaceable.” The COE would require mitigation for impacts to jurisdictional wetlands during the Section 404 permitting process; these wetland impacts would not be irreversible or irretrievable commitments of resources. Impacts to the hydrology of wetlands are not irreversible and can be mitigated.

Issue 7: There is a concern that there is insufficient water to support a development at Wolf Creek, thus increasing the impacts.



Issue 7 Response: As shown in the record, the best available information indicates that the proponent's water rights are sufficient to meet the needs of development, including the maximum build out scenario. The claims/arguments made by the objector above are not supported by the record or other evidence.

As described in Section 3.4.1 of the FEIS, Vol.1, LMJV's existing water rights and plan for augmentation decreed in Case No.87CW7, are applicable to the Village at Wolf Creek Access Project. "While the Action Alternatives are not identical to development concepts contemplated in 1987, the overall uses and water resource operations proposed by the current Proponent fall within the limits of the original 1987 decree (p. 3-25)."

The FEIS describes the senior Colorado Water Conservation Board (CWCBC) instream water rights on Pass Creek, and the North Branch of Pass Creek in Section 3.4.3.2. Page 3-27. The analysis of the Proponent's water supply in Section 4.4.1, page 4-47 included the CWCBC's instream flow water rights. The Proponent's augmentation plan decreed in Case No. 87CW7 contains a section specific to the exercise of the Proponent's appropriative rights of exchange, as they relate to CWCBC's instream flow rights. The Exchanges detailed in 87CW7 are subject to a stipulated agreement with the CWCBC, to account for and protect the CWCBC's instream flow rights. The terms of this decree, including the CWCBC stipulation, were incorporated into factors that were applied to the water supply model.

Specific to the CWCBC instream flow right, the water supply model required the Proponent to release water from on-site storage in all months, except during the high flow runoff season. The FEIS evaluated a scenario in which the CWCBC instream flow rights on the South Fork of the Rio Grande River, and on Pass Creek, were fully augmented in every year between 1938 and 2009, during the critical summer and winter season (July through March). The water supply model also restricted the ability to divert into storage, by only allowing this diversion during the high flow runoff season, and only in an amount that protects the CWCBC instream flow requirement on both Pass Creek and the South Fork of the Rio Grande River. As a result, the FEIS evaluated a scenario in which the Proponents diversions to storage could not cause the streamflow to drop below the CWCBC's instream flow right.

LMJV's decreed plan for augmentation contemplated a development of more than 208 units. As shown in Table 3.4-1 of the FEIS, the development concept outlined in Case No. 87CW7 included: 71 residential homes, 72 residential duplexes, 1,483 condominium units, 220 employee housing units, 87 apartments, 34 cluster housing units, 440 hotel units, 37 dude ranch units, and 259,200 ft² of commercial space. This development concept is equal to 1,748 Equivalent Residential Units (EQRs), equal to 272.7 acre feet per year, and an annual consumptive use of 30.1 acre feet.

The Maximum Density Development Concept that is presented in Section 4.4.1.2.2 of the FEIS, consists of 138 single family homes, 552 townhomes, 821 condominium units, 200 hotel units, and 221,000 ft² of commercial space (1,711 "units" + 221,000 ft² of commercial space). Using the water use assumptions outlined in Case No. 87CW7 (described above), this development concept would generate a water requirement equal to 1,471 EQRs, or an annual diversion amount 153.4 acre feet, which is less than LMJV's decreed limitation (272.7 acre feet). Therefore, LMJV's decreed plan for augmentation is sufficient to allow for any of the development concepts of the Proposed Action to be developed, without causing injury to other water right users in the Rio Grande basin.



Issue 8: Objectors raise a concern that waste disposal has the potential to affect ground water quality.

Issue 8 Response: Section 313 of the Federal Water Pollution Control Act states that federal agencies “shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity.” Through approval of the selected alternative, the Forest Service is authorizing a land exchange, not a development. The land exchange would not violate water quality standards, or the Federal Water Pollution Control Act.

Objections previously raised concern regarding water quality and attainment of In-Stream Water Quality Standards (ISWQS), but did not specifically state that the Forest Service would violate the Federal Water Pollution Control Act in DEIS comment letter CL833, dated October 11, 2012.

Objectors raise general concerns about potential impacts to groundwater quality from waste disposal and septic systems. As discussed in FEIS Section 2.4, which outlines the development concepts of the action alternatives, individual septic systems would be used only for the Low Density Development Concept, whereas the Moderate and Maximum Density Development Concepts would be constructed with a WWTP that would discharge to North Pass Creek.

Under the Low Density Development Concept of the proposed action, up to nine lots with individual water wells and septic systems could be constructed. Septic systems are regulated by Colorado and Mineral County to prevent pollution of water wells or water sources from septic systems. The septic systems would attenuate residential wastewater to acceptable levels without degradation of the overall aquifer. Septic systems would have a negligible impact on water quality and stream flow in North and South Pass Creeks (Table 2.6-3 of the I FEIS).

WWTP discharge under the Moderate and Maximum density development concepts would affect the surface water quality of North Pass Creek, but is not expected to affect groundwater quality. Surface water impacts from the WWTP discharge are discussed in FEIS Vol. 1, Section 4.1.

Water quality standards for Colorado are established and regulated by the Colorado Department of Public Health and Environment (CDPHE). As discussed in the FEIS, pollutant concentrations resulting from WWTP discharge are not predicted to exceed ISWQS for the action alternatives. Moreover, the CDPHE is unlikely to permit additional loading if pollutants already exceed ISWQS. The CDPHE WWTP permitting process is intended to uphold state and federal laws.

Issue 9: There is a concern that increased air pollution will occur due to the scale of the development which will adversely impact the pristine Continental Divide.

Issue 9 Response: The Forest conducted an adequate analysis of the potential indirect effects on Air Quality.

The FEIS listed Air Quality as an issue(s) and outlined the area for the analyses and the Indicators (FEIS Vol. 1, pp. 1-9). Air Quality effects Under Alt 2 – Land Exchange on: ‘Federal Exchange Parcel - has a minimal direct effect’, ‘Non-Federal Exchange Parcel – minimal to slight improvement’, ‘Net effect to USFS’ – minimal net increase (FEIS Vol. 1, Table 2.6-2, pp. 2-14).



An Air Quality Impact Analysis was conducted utilizing Alternative 3, for Maximum Development Density, as the basis for modeling, because it would have the greatest potential effect (i.e. – worst case scenario) on Air Quality. Table 2.6-3.5 lists the Air Quality effects by Development Density for the Action Alternatives (FEIS Vol. 1, Table 2.6-3.5, pp. 2-25 & 2-26). The process and effects of the Air quality analysis is outlined in the FEIS (Vol. 1, pp. 3-34 through 3-36)

Issue 10: The objector alleges that the development will drain crucial business away from the small and rural Communities of South Fork, Del Norte, Alamosa and Pagosa Springs, whose economies are dependent on tourist spending. Moreover, the objector feels that the development is shortsighted, given the development and massive beetle kill in the area.

Issue 10 Response: The Forest considered the potential impacts throughout the FEIS, in Section 6.0, discussing impact on local businesses and impacts to local communities, pp. 161-162 and pp.171-174. There is no violation of NEPA.

The Forest discusses through Section 4.13 of the FEIS, and in their response, Section 6.0, pp.161-162 and 165-168, that implementation it is not expected to harm the economies of local communities. Based on the observation of the impacts of ski resorts on nearby communities, both in Colorado and throughout the United States, ski resorts generate substantial spending within the resort, and outside the resort. WCSA's impact on nearby business communities is already reflected in the substantial base of businesses oriented toward skiers/visitors in communities in Archuleta and Rio Grande Counties. These business communities would be enhanced and expanded as WCSA visitation increases under Alternative 2.

It is acknowledged that only Mineral County would directly benefit from the property taxes that future residential/resort development would generate; however, property taxes are only one aspect of the full range of economic impacts that the project would generate. Using the Alternative 2 Maximum Density Development Concept as an example, the following points illustrate the impact of this alternative outside of the resort.

- Skier & Visitor spending 'drives' resort economies and has a significant impact on businesses in adjacent communities and it is estimated that 49.5 percent of winter (skier) visitor expenditures and 47.2 percent of summer visitor expenditures would occur outside the resort (Table 4.13-1). Communities in Archuleta and Rio Grande County would benefit from these outside expenditures. As shown in Table 4.13-14, modeling indicates that at completion, the Alternative 2 Maximum Density Development Concept would generate \$151.1 million in visitor expenditures on an annual basis; \$73.7 million of these expenditures would occur outside of the resort, and can be expected to primarily occur in Archuleta and Rio Grande Counties.
- Modeling indicates that the construction of the Alternative 2 Maximum Density Development Concept would generate \$448.5 million in cumulative labor income (see the Individual Prosperity Heading of Section 4.13.3.2.3). Virtually all construction workers would live outside the resort; as such, all of this income would benefit communities outside the resort, including communities in Archuleta and Rio Grande counties.



- Modeling indicates that construction of the Alternative 2 Maximum Density Development Concept would generate \$12.9 million in sales taxes (see the Public Revenues and Fiscal Impact Heading of Section 4.13.3.2.3); all of the expenditures resulting in these sales taxes would occur outside the resort, likely from suppliers in Archuleta and Rio Grande Counties.
- At completion, modeling for this analysis indicates that the Alternative 2 Maximum Density Development Concept would support 2,091 FTEs on an ongoing basis. These employment opportunities would benefit both current residents of the area, and workers who would move to the area. Moreover, modeling indicates that the completed Alternative 2 Maximum Density Development Concept would generate \$50.2 million in labor income on an annual basis (see the Individual Prosperity Heading of Section 4.13.3.2.3). The great majority of resort-based employees and employees generated on secondary bases would live outside the resort (in Archuleta and Rio Grande Counties); as such, communities outside the resort would benefit from this labor income and resultant consumer spending.
- At completion, modeling for this analysis indicates the Alternative 2 Maximum Density Development Concept would generate \$3,744,000 in sales taxes on an annual basis, both inside and outside the resort (see the Public Revenues and Fiscal Impact Heading of Section 4.13.3.2.3). The FEIS notes that approximately \$1,712,000 in sales taxes – annually – would be generated outside the resort, likely in Archuleta and Rio Grande Counties.

Issue 11: Objectors are concerned that a proposed development is shortsighted given the high fire danger and extensive beetle kill in the area.

Issue 11 Response: The authorized officer has made a public interest determination fully supported by the project record, and there is no violation of 36 CFR 254.3. Land exchanges are by definition, tradeoff decisions. As part of any land exchange decision, the authorized officer may complete an exchange only after completing a public interest determination. Under 36 CFR 254.3, there are factors that the authorized officer must consider to determine the public interest, as listed on page 24 of the DROD. The authorized officer did consider these factors, and the findings and supporting rationale are documented and made a part of the administrative record. The DROD noted in the public interest determination that there are negative effects, but that they have been fully disclosed. With regard to the creation of wildland-urban interface, the FEIS, Section 6.0 Vegetation Resources Responses pp.116-117, responds to the issue raised regarding increased levels of spruce beetle activity in the area and notes that there will be an increased risk of wildfire. The Forest notes in Appendix A-3, p8 (details common to moderate and high density development section), that there is a need to develop a fire protection plan in conjunction with Mineral County. The FEIS does discuss increased levels of spruce beetle activity in sections 3.6.3 and 4.6, and acknowledges there will be an increase in wildfire hazard because of the beetle. The Mineral County Subdivision Regulations in Sections 2.2.2.5 and 4.23 require the mapping of wildfire prone areas, and mitigations to reduce or eliminate wildfire hazards for a PUD; and, as the private land is developed, they would be required to comply with these regulations. The DROD also notes that as required in section (ii) of the public interest determination, the intended use of the non-Federal lands, to be incorporated into the existing ski area, will not conflict with the established management objectives on adjacent Federal lands.



Issue 12: There are concerns the 1987 land exchange was inappropriate and without the scenic easement, would have been in violation of the Forest Plan visual management objectives. Thus, objectors contend, the scenic easement must be applied to the proposed land exchange and should not be removed; to do otherwise would be arbitrary and capricious because the current proposal relies on the terms of the 1987 land exchange to define reasonable access.

Issue 12 Response: The proposed actions, even though not agreeable to some, are in compliance with applicable regional guidelines, the Forest Plan, and/or law, regulation and policy, as supported by adequate analysis and rationale made available in the FEIS and DROD, and furthermore supported by information in the project file.

Discussions of the 1987 Land Exchange and Decision Notice are found in: DROD, Section 8.0, folder 8.2: ROD, Decision Rationale, Project Record 1.4 Project Background; 1986 LEX Final EA., p. 19 (3-11), p. 48, p 37 (4-11), pp. 164-168 (Appendix K) and 1986-09-29 Amended DN.. Discussion of scenery issues are found in: FEIS Vol. 1, Section 3.10, (pp. 3-106 through 3-112), Affected environment for scenery; FEIS Vol. 1, Section 4.10, (pp. 4-151 through 4-160), Environmental consequences for scenery; FEIS Vol. 2, Appendix F, 1998 Scenic Easement, pp. 35-42, Contains the 1998 Scenic Easement in its entirety; FEIS Vol. 2, Appendix I, Section 6.0, 15 Scenic Resources, Responses 1 through 3, (pp. 139-141), enforcement & applicability of the scenic easement; DROD, Section 5.0, (p. 8), Rationale for Decision, Forest Plan Direction; discusses scenic easement; and, DROD, Section 5.0, (p. 25; finding #6), Rationale for Decision, Public Interest Determination; finding that the land exchange would allow LMJV to develop lands with uses compatible to existing uses at WCSA.

The 1998 Amended Scenic Easement was a voluntary agreement between the LMJV, Wolf Creek Ski Corporation, and the United States of America (the Grantors). Per the Easement, the Grantors confirmed their desire to manage and develop the private land acquired via a land exchange in accordance with the 1986 Decision Notice that approved it. It is designed to ensure that development of private lands is “compatible with and complimentary to” the WCSA. At the outset of the current NEPA process, the decision was made that the scenic easement would only apply to the lands (roughly 120 acres) originally conveyed to the LMJV as a result of the 1986 land exchange. The additional (roughly) 204.4 acres of NFS lands that would be conveyed to the LMJV as a result of this land exchange would not be subject to the easement. Thus, the scenic easement is not proposed to be removed or relinquished as a component of the land exchange; rather, it does not apply to newly-acquired private lands.

Regardless of the where the Scenic Easement applies and does not apply, Mineral County zoning and land use regulations will apply to the development of all private lands. Furthermore, any development will be subject to the Mineral County PUD review/approval process.

Per the DROD Decision Rationale (Section 7.0, p. 25), it is a logical conclusion that development of private lands for a residential village (subject to both the 1998 Amended Scenic Easement, and Mineral County zoning and land use regulations) would be compatible with the theme, setting, and desired conditions of MA 8.22 for ski based resorts. The Forest Plan states that visitors can expect to see facilities associated with the ski area, and four-season recreation resource uses are encouraged. (1996 Forest Plan p. IV-39)



The surrounding lands are in Management Area 8.22 SKI-BASED RESORTS – “These areas are managed for their existing or potential use as ski-based resort sites.” (LRMP, pp. IV-39)

Under Alternative 2, ± 177.8 acres of private lands in this inholding would be exchanged with the Rio Grande NF for ± 204.4 acres of NFS lands, resulting in a private parcel of ± 323.9 acres. The ± 119.5 acres of the existing private inholding that remain in private ownership would still be subject to the Scenic Easement requirements; however, the ± 204.4 acres of Federal land proposed to be exchanged with the Proponent would not be subject to the provisions of the Scenic Easement.

In the FEIS Sections 3.10.3.2 and 4.10.1.5.1, and in the Scenic Easement itself (Appendix F of FEIS Volume 2, pp. 35-42), the easement is not intended to conflict with or intrude upon land use controls of the State of Colorado, Mineral County, or other unit of local government. The Forest Service has determined that, as a Federal Land Management Agency, it would be inappropriate for it to attempt to enforce additional regulations on private lands. Thus, any future development of private lands (including lands subject to the existing Scenic Easement), is required to comply with the rules and laws of Mineral County, under a PUD, as the appropriate mechanism for land use control on private lands. (FEIS Vol. 2, Appendix, Response to Comments, pp. 140)

Issue 13: The objector contends that the Agency’s cash equalization payment source has not been identified.

Issue 13 Response: Under the land exchange regulations found at 36 CFR 254.3, the disclosure for the cash payment source is not necessary for the Federal or non-Federal party. The source of the cash equalization payment is not part of the decision process for determining the validity and the public interest in the land exchange.

Issue 14: The objectors contend that the proposal is not in the public interest, will harm an environmentally sensitive area, and is unnecessary and inconsistent with the Forest Service’s mission of protecting the land for future generations.

Issue 14 Response: Land exchanges are by definition, tradeoff decisions. As part of any land exchange decision, the authorized officer may complete an exchange only after completing a public interest determination. Under 36 CFR 254.3, there are factors that the authorized officer must consider to determine the public interest, as listed on page 24 of the DROD. The authorized officer did consider these factors, and the findings and supporting rationale is documented and made a part of the administrative record. The DROD noted in the public interest determination that there are negative effects, but they have been fully disclosed. With regards to issues raised by the objectors there are effects associated with lynx habitat, creation of wildland-urban interface, snow storage, impacts on nearby communities and wetlands, all of these issues are discussed throughout the FEIS and Appendices. The DROD also notes that, as required in section (ii) of the public interest determination, the intended use of the non-Federal lands, to be incorporated into the existing ski area, will not conflict with the established management objectives on adjacent Federal lands. The authorized officer has made a public interest determination fully supported by the project record, and there is no violation of 36 CFR 254.3.

The Forest Service Handbook, 5409.13.32.4 requires that a Feasibility Analysis be completed. As part of the Feasibility Analysis, the Forest Service is directed to summarize the public interest



factors associated with the exchange. The Forest Service discusses that the exchange *appears* to be in the public interest in the Feasibility Analysis for this project. Exchanges are then further evaluated under NEPA, and the decision must include a public interest determination that meets 36 CFR 254.2. The Forest Service discusses the public interest determination, as required at 36 CFR 254.3(b) (1), in the DROD pp. 24-25. Each of the following resource values and public considerations is also discussed throughout the FEIS, Response to Comments, and specialist reports. Each value/consideration and their specific references are detailed as follows:

- Development would be moved further from Ski Area, thus potentially reducing some of the expressed recreational conflicts.

The FEIS addresses the consolidation of the ski area under Table 2.6.2 on p. 2-16. The DROD at page 7 evaluates the exchange under Forest Plan Guidelines as it relates to value of lands primarily for recreation purposes. The lower half of the two chairlifts and numerous ski trails are located on the non-Federal parcel. The Forest responded to multiple comments regarding public interest included in the Feasibility Analysis and DROD, discussing the movement of the development further from the ski area to reduce recreation conflicts in Appendix I, Section 6.0, 03 Responses, pp. 81-83.

- Net gain of wetlands to be acquired and protected by Rio Grande NF.

Document Name	Location in Record/Document	Relevance
DROD Record # 82001	Decision Rationale, Item 7 Public Interest Determination, p. 25	Documents that land exchange would result in Forest Service acquisition of 52 acres of riparian wetlands, of which 24 acres are classified as fens, 11,565 linear feet of perennial streams, and 7,338 linear feet of intermittent streams.
FEIS Vol. 1 Record # 72001	Section 2.6.2 Summary of Indirect Environmental Consequences of Low, Moderate and Maximum Density Development Concepts, Table 2.6-2, p 2-15	Documents net effect to NFS (gain) of 40.4 acres of wetlands, 22.7 acres of fens, 8,641 linear feet of perennial streams, 6,092 linear feet of intermittent streams, springs (8), and the net loss of 1.1 acres of pond habitat.
FEIS Vol. 1	Wetland Section 4.7.1.2.1, p.	Documents that the direct effect of the land exchange would result



Document Name	Location in Record/Document	Relevance
Record # 72001	4-88	in a net gain of wetlands, fens, springs, and streams.
FEIS Vol. 2, Appendix I Record # 72002	Section 6.0 Comment Summaries & Responses, 12 Wetlands, Response 22, p. 126	Documents that land exchange would result in net gain of wetlands.
Feasibility Analysis Record # 11002	Public Interest Determination, p. 14	Documents that land exchange would result in a net gain in wetlands and streams.

The Rio Grande National Forest Land and Resource Management Plan Land Adjustments Forest Standards and Guidelines direct that the Forest consider acquiring lands with important or unique resources such as wetlands. Both the Federal and non-Federal parcels contain riparian wetlands, some of which are classified as fens, and perennial and intermittent streams. In addition, the non-Federal parcel has eight springs. The Federal parcel also has a one-acre pond. Through the exchange, the Forest Service will acquire approximately 52 acres of riparian wetlands, which include roughly 24 acres of fens (the highest quality of wetlands), eight springs, 11,565 linear feet of perennial streams, and 7,338 linear feet of intermittent streams; while giving up ownership of roughly 12 acres of riparian wetlands which include one acre of fens, a one-acre pond, 2,924 linear feet of perennial streams, and 1,246 linear feet of intermittent streams. The Rio Grande NF will have a net gain of roughly 40 acres of riparian wetlands, including the 23 acres of fens, eight springs, 8,641 linear feet of perennial streams, and 6,092 linear feet of intermittent streams, and a net loss of a one acre pond.

The acquired wetlands, streams and springs, as a part of the Rio Grande NF, would be managed and protected in accordance with the Forest Plan's forest-wide objectives, standards and guidelines. The EPA September 28, 2012 comment letter (CL1) on the DEIS states, "The EPA supports the net benefit to wetlands resulting from the land exchange since critical wetland complexes currently under private ownership will become Federal land and, therefore, afforded protection under Executive Order 11990, Protection of Wetlands."

- There would be no loss of viability across the Forest for Forest Service RFSS and MIS.



Document Name	Location in Record/Document	Relevance
FEIS Vol. 1 Record # 72001	Section 2.6.2, Table 2.6-2 Summary Comparison of Direct Effects of Land Ownership Changes under Alternative 2 – Land Exchange, p. 2-15 Table 2.6-3.9 Summary of Indirect Environmental Consequences of Development Concepts – Wildlife, p. 2-32	Summarizes direct and indirect effects of land exchange on RFSS and MIS.
FEIS Vol. 1 Record # 72001	Section 4.9.1.2.2 Forest Service RFSS, pp. 4-124 to 4-128 Section 4.9.1.2.3 Management Indicator Species, pp. 4-128 to 4-129	Documents and discusses direct and indirect effects to RFSS and MIS.
FEIS Vol. 2, Appendix I Record # 72002	Section 6.0 Comment Summaries Responses, 14 Wildlife, Response 18, p. 136	Discusses impacts to RFSS and MIS.
Wildlife BE Record # 51215	Section 7.0 RFSS Determination Summary, p.76 Section 8.0 MIS, Summaries of Effect, pp. 90, 99, 106, 111, 118, 123, 132	Discuss impacts to RFSS and MIS.

Determinations for RFSS range from “No impact” to “May impact individuals but not likely to result in a loss of viability on the planning area, nor cause a trend to Federal listing or a loss of species viability rangewide.” Indirect and cumulative effects to all MIS, except the Rocky Mountain elk, would be insignificant and discountable on the species’ forest-wide population, trend, or habitat distribution. Indirect and cumulative effects for Rocky Mountain elk would be appreciable, but would be unlikely to measurably affect the population, trend, or habitat distribution across the Rio Grande NF.

- There are both positive and negative effects associated with land exchange; however, negative effects have been fully disclosed.



Table 2.6-2 summarizes the direct effects of the land exchange, which include a net loss of 28 acres of NFS lands; a net increase in perennial and intermittent streams, wetlands, fens, and springs; net gains and loss of habitat types; net loss of primary lynx habitat; net gain in southwestern willow flycatcher habitat; net gain in RFSS and MIS high altitude riparian habitat, but a net loss of spruce-fir forest habitat; and the ability to consolidate existing ski area operations as per the 1996 Forest Plan and eliminate the need for ski easements.

Table 2.6-3 provides a summary of indirect effects of the Maximum Density Development Concept for Alternative 2, the Land Exchange. Indirect effects include potential impacts to the natural environment. However, mitigations required by local, state and Federal agencies would regulate impacts to these privately owned resources, reduce the extent of the impacts, and require mitigations for impacts. Various sections, specifically Chapter 4 of the FEIS, identify and disclose impacts to groundwater, soils and wetlands. Habitat for Canada lynx would be affected and the determination for lynx is “may affect, likely to adversely affect.” The BO issued an incidental take statement authorizing a take specifically for the expected mortality of lynx being hit on the highway. The BO provides Conservation Measures that are part of the proposed action to mitigate the indirect effects of the project on lynx. There will be a net loss of lynx habitat in the exchange. The southwestern willow flycatcher BO determination is “may affect, not likely to adversely affect.

- WCSA supports the proposed land exchange, in contrast to the development plan approved by Mineral County in 2003.

A letter submitted by WCSA President/CEO Davey Pitcher on October 10, 2012, states that WCSA supports Alternative 2 (Land Exchange Alternative) for the following reasons:

- The realigned property boundaries will protect the ski heritage of WCSA;
 - Wolf Creek believes that moving the current boundary away from the Alberta Park wetlands complex will be beneficial to water users of the San Luis Valley and the ecosystem as a whole; and,
 - If the USFS proceeds with the land exchange alternative, the private land will become contiguous with the State Highway System (U.S. Highway 160), which would relieve the Forest Service from administering road development.
- The Intended uses of conveyed Federal lands will not substantially conflict with Management Objectives on adjacent NFS lands managed as 8.22 Ski-Based Resorts.

36 CFR 254.3(f) states that lands acquired by exchange, that are located within areas having an administrative designation established through the land management planning, process shall automatically become part of the area within which they are located, without further action by the Forest Service; and, shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

The lower half of two chairlifts and numerous ski trails are located on the non-Federal exchange parcel to be acquired by the Rio Grande NF. Consistent with 36 CFR 254.3(f), the conveyed non-Federal land would result in the parcel becoming part of Management Area 8.22 Ski-Based Resorts and inclusion in the ski area boundary. As discussed in Section 1.9 of the FEIS, the exchange would consolidate existing ski area operations, eliminate the need for easements, increase the acreage of



Federal land available for skiing, reduce potential conflicts, and generally benefit NFS developed recreation opportunities. The FEIS at section 3.10 and 3.11, p.3-109 discusses Management Area 8.22. The DROD Decision Rationale Item 1 discusses Forest Plan Direction on pp. 7-8, regarding the benefits of Federal ownership of the non-Federal exchange parcel.

The Federal lands proposed for conveyance would be used to develop a residential village adjacent to the WCSA. Associated facilities such as trails, lifts, and lodges are included. This is an area of concentrated use.

- The exchange would result in an increase in tourism, which would foster economic opportunity, growth and prosperity, increase employment and individual income within the three-county analysis area, and generate public revenue through property and sales taxes for Mineral County and its school district.

The FEIS provided a summary and discussion of development concepts in Table 2.6-3.13, pp. 2-40 to 2-46. Under Section 4.13.3.2.3 the Maximum Density Development Concept, pp.4-213-4-225, there is discussion of the fiscal impacts on employment, individual prosperity and public revenues. These are as summarized below.

Tourism: The completed project is expected to attract over 830,000 person/nights on an annual basis, an average of 2,273 visitors on every night during a year. At completion (Year 2044), Village visitors would generate over \$151 million in annual expenditures, inside and outside the Village. This level of expenditures would be expected to continue in future years.

Employment Status: During the 30-year phase-in period, the project is projected to generate a cumulative total of over 8,700 construction FTEs, an average of 290 FTEs per year. Upon completion in year 2044, ongoing Village operations would generate a total of 2,100 annual FTEs; these jobs would continue into the future for as long as the Village maintains operations.

Individual Prosperity: Construction of this development concept is expected to cumulatively generate a total of \$448.5 million in labor income, including \$251.7 million in direct income and \$196.9 in indirect/induced labor income. Project operations at the point of completion (2044) would generate \$50.2 million annually in labor income, including \$29.6 million in direct income and \$20.5 million in indirect/induced labor income. Total personal income in the Analysis Area in 2009 was \$797.9 million; during the peak year (2043), this development concept would increase this value by 5.7%.

Public Revenues and Fiscal Impact: Using current tax rates, annual property tax collections at the time of completion in 2014, it is expected they would total \$5.29 million in Creede Consolidated District taxes and \$6.17 million in Mineral County taxes. These values would be expected to continue into the future. Cumulative sales tax revenues generated by construction would be \$12,894,369. Upon completion, ongoing operation and unit visitor expenditures would generate approximately \$3,774,000 in sales taxes on an annual basis. At project completion, projected visitor expenditures in the Village alone would generate an estimated \$2,062,000 in sales tax for Mineral County. Approximately \$1,712,000 in sales taxes – annually – would be generated outside the resort, likely in Archuleta and Rio Grande Counties.



- The land exchange meets equal value requirements of 36 CFR 254.3

36 CFR 254.3 (C) Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

Exhibit 7A, found at: <http://friendsofwolfcreek.org/wolf-creek-access-project-administrative-objection-exhibits> is a copy of the Supplemental Report to the Appraisal of non-Federal land with a report date of September 12, 2014. The instructions contained in the Request for Quotations state, in part: The contract appraiser shall make a detailed field inspection of the subject property, and conduct as many investigations and studies as are necessary to derive sound conclusions. The development of appraisals for the Federal and non-Federal parcels proposed for exchange, and the review of those appraisals, followed a structured process; one that complied with applicable law, policy, and standards. Specifically, the appraisals were prepared in compliance with 1) 36 CFR 254, Subpart A, 2) the current edition of the Uniform Standards of Professional Appraisal Practice, 3) the current edition of the Uniform Appraisal Standards for Federal Land Acquisitions, and 4) USDA Forest Service Statement of Work written specifically for the assignment.

Differences between the subject property and parcels that sold were identified by the contract appraiser to be: property rights conveyed, financing terms, conditions of sale, market conditions (time), location, ski area influence, access, adjacent land uses, utility availability, natural features, topography, views/exposure, property size, and zoning/land use. By considering these differences within the Sales Comparison Approach, defensible conclusions were reached. Sale transactions used in the Sales Comparison Approach are not synonymous with similarly situated properties as defined in ANILCA. Document 11006-2013090901 provides direction for the Federal parcel appraisal.

Under the two appraisals, one each for the Federal and non-Federal parcels, both with effective dates of value (Reference Document number 11008-20140915) of September 1, 2014, were completed to ensure compliance with 36 CFR 254. While the appraisals were excluded from NEPA analysis, conclusions reached in the appraisal process were considered in the decision. Appraisals, and the review reports that approved them for agency use, are used by the deciding officer when making decision as a requirement of 36 CFR 254.3(c), but are developed parallel and external to NEPA process. Comments received on appraisal during scoping were provided to contract appraiser and considered in the updated appraisal report as per the supplemental appraisal instructions. This was discussed in the response to comments in Appendix I of the FEIS, Section 6.0, p.80.

Issue 15: Objectors are concerned the development would require significant infrastructure which would impact the fragile high elevation landscape. The development would be out of character with the surrounding landscape and is not sustainable.

Issue 15 Response: The US Forest Service complies with NEPA by conducting a qualitative analysis of the high elevation landscape.

The FEIS describes the physical and biological environment of the project site and discloses direct, indirect, and cumulative effects to these resources. Table 2.6-2 summarizes the direct effects of the



land exchange to the physical and biological resources; and, Table 2.6-3 summarizes the indirect effects of the Low, Moderate and Maximum Density Development Concepts of Alternative 2 to the physical and biological resources.

Issue 16: An objector contends the proposed mitigation measures are inadequate to address negative impacts (specifically to protect habitat, corridor fragmentation, water resources, pollution, and human disturbance) and that federal law is clear that mitigation is not a substitute for protection.

Issue 16 Response: As per 36 CFR §254.3(h), Reservations or restrictions in the public interest: *In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.*

FSH 1909.15 – National Environmental Policy Act Handbook, Chapter 10 – Environmental Analysis - *For each alternative considered in detail, analyze and document the environmental effects, including the effectiveness of the mitigation measures that would result from implementing each alternative, including the no-action alternative.*

Consistent with 40 CFR §1502.16(f), Section 2.7 of the Final EIS includes Lynx Conservation Measures that were developed specifically for Alternative 2 – the Land Exchange. In addition, Best Management Practices (BMPs) (e.g., requirements for a storm water discharge permit and storm water management plan) are identified for actions that could occur on NFS lands resulting from Forest Service approval of the Land Exchange. BMPs apply to construction and operation of a ski area access road and easements for the Village Ditch Infiltration Gallery/raw water pipeline corridor. Lynx Conservation Measures were developed during the informal ESA Section 7 consultation process with the U.S. Fish and Wildlife Service, as indicated in the November 15, 2013 Biological Opinion. These Lynx Conservation Measures are briefly summarized in Section 2.7.2 of the FEIS, and an expanded explanation of them is provided in Appendix B (Volume 2 of the FEIS). Appendix B includes detailed explanations of the eight conservation measures, as well as discussions about enforcement and efficacy of the overall lynx conservation strategy.

Chapter 4 of the DEIS and FEIS disclose impacts to groundwater, soils, and wetlands on private lands. It is the Proponent's responsibility to comply with all federal, state, and county regulations. These disclosures are key pieces of the indirect environmental analysis and determinations for both the DEIS and FEIS.

Issue 17: The FEIS fails to fully consider the value of the Federal lands-property. The values should be higher for the Federal parcel, due to amount of developable terrain and National Forest Boundary.

Issue 17 Response: The appraisal fully considered all aspects of the Federal and non-Federal properties in compliance with the applicable laws. The Federal and non-Federal parcels were appraised using the appropriate standards, as detailed in the appraisal instructions issued to the contract appraiser, including a detailed field inspection of the properties, to derive sound



conclusions. The development of the federal and non-Federal appraisals, and the review of the appraisal by the Federal Regional Appraiser, followed a structured process in compliance with the applicable law, policy, and standards. Differences between the subject properties were noted, including physical description -topography, vegetative cover, water influence, and other characteristics. The appraisal is not used to justify the land exchange; rather, it is used to meet the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA).

Issue 18: There is concern that access to this development would detrimentally impact the recreational experience at WCSA, Alberta Park Reservoir, The Continental Divide Trail and Lobo Overlook.

Issue 18 Response: The objector failed to raise the issue in comments previously submitted during a public comment period, and the issue is not based on new information (36 CFR 218.8(c)).

Issue 19: There is concern the agency tried to limit public comment by the timing of the release of the FEIS, the numerous occurrences of the website being offline, access to project documents, and lack of information on where to submit comments. An objector contends the agency violated NEPA and CEQ guidelines in attempts to limit public comments.

Issue 19 Response: The record demonstrates that the Forest Service ensured adequate public involvement and participation in the NEPA process, consistent with applicable law, regulation, and policy. The claims/arguments made by the objector above are not supported by the record or other evidence. Based on the above analysis for this issue, the decision should be affirmed.

The complete Administrative Record was maintained and made available in its entirety on the public website via the Forest Service's Planning, Appeals and Litigation System (PALS) on November 28, 2014. The total number of documents uploaded was 399. Public and Agency Involvement for the project is described in Section 1.5 of the FEIS. As required by 36 CFR 218, the Forest Service ensured public involvement in the NEPA process by initiating a scoping period beginning April 15, 2011; opening a comment period on the DEIS beginning August 17, 2012, which was later extended; and, initiating an objection period on the FEIS and DROD beginning November 21, 2014. Comments on a proposed project or activity to be documented in an EIS are accepted for a minimum of 45 days, beginning on the first day after the date of publication in the Federal Register of the notice of availability of the draft EIS. Computation of the comment time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m. in the time zone of the receiving office, for comments filed by electronic means such as email or facsimile) (36 CFR 218.25).

Written objections including attachments must be filed with the reviewing officer within 45 days, following the publication date of the legal notice of the EIS in the newspaper of record; and, it is the responsibility of objectors to ensure that their objection is received in a timely manner (36 CFR 218.26). These requirements for objection filing were included in the legal notice published in the newspaper of record (Valley Courier); and on the Forest Service project website on November 21, 2014; and in the Federal Register notice of availability of the FEIS and DROD published on November 28, 2014.



Issue 20: Objectors suggest the agency is not being transparent in its dealings with the developer.

Issue 20 Response: The Responsible Official followed administrative procedures pursuant to NEPA third Party contracting and conditions of the MOU.

Based on a review of the Exhibits noted below, no NEPA decision points were discussed with the proponent or the proponent's representative. Information in the record show that the MOU (Administrative Record 2.4 - 20110507 Signed USFS-LMJV MOU.pdf) was followed.

Exhibits found at: <http://friendsofwolfcreek.org/wolf-creek-access-project-administrative-objection-exhibits>

Exhibit 16: Employment Agreement Offer from Adam Poe to David Johnson (WER).

Exhibit 21: Email from Tom Malecek to David Johnson regarding cooperating agencies

Exhibit 25: FOIA response with redacted information

Exhibit 30: Email from David Johnson to Tom Malecek with details of contacts with proponent

Exhibit 31: Email from Tom Malecek to David Johnson regarding Feasibility Analysis as it related to Purpose & Need

Exhibit 32: Email from David Johnson to Adam Mendonca regarding response to comments

Exhibit 33: Email from Tom Malecek to Cambria Armstrong and David Johnson regarding comment period

Exhibit 34: Email from Tom Malecek to David Johnson and Randy Ghormley – forwarded information from Adam Poe

Issue 21: Objectors contend the agency is biased for the development, as demonstrated by how the agency displayed data, included/excluded specific sets of data, choice of words, and inconsistently utilized I-70 corridor ski areas for comparison

Issue 21 Response: The objector failed to raise the issue in comments previously submitted during a public comment period, and the issue is not based on new information (36 CFR 218.8(c)).

Issue 22: Objectors are contending the proposal does not meet the Purpose and Need; is not in the public's interest; unnecessary and inconsistent with the Forest Service's mission of protecting the land for future generations, due to impacts to the high altitude alpine habitat, pristine nature of the area, wildlife, and water.

Issue 22 Response: The Purpose and Need complies with the requirements of NEPA and associated regulation and policy. The claims/arguments and reasoning made by the objectors are not supported by the record or other evidence.



Consistent with CEQ regulations at 40 CFR 1502.13 and FSH 1909.15, Chapter 10, the Purpose and Need for Action was identified early in the NEPA process, and released for public scoping and comment. The Need for Action discusses the relationship between the desired condition (reasonable access to private property, in this case), and the existing condition (limited access to private property), in order to answer the question, “Why consider taking any action?” (FSH 1909.15, Chapter 10). As stated in the FEIS ROD, p. 2, the Forest Service’s Purpose and Need of the project, is to allow the LMJV to access its property to secure reasonable use and enjoyment thereof as provided in ANILCA, and Forest Service regulations, while minimizing environmental effects to natural resources within the project area. The intent of the applicant is, in the future, to develop the Village at Wolf Creek. Therefore, future development of the Village at Wolf Creek is not a part of the alternatives analyzed in the FEIS. However, development of the private lands by the applicant is considered a “connected action”, and is analyzed as an indirect effect of approving either action alternative (FEIS p. 1-29).

As discussed in the FEIS, Section 1.10, ANILCA (and 36 CFR 251.110-114, Subpart D (Access to Non-Federal Lands)) defines the Forest Service’s legal obligations to provide the land owner with adequate access to its inholding, to secure reasonable use and enjoyment thereof. The Rio Grande NF would not be considering the proposed action, were it not for ANILCA. As discussed in the FEIS ROD p. 11, in 2005, a state district court found that existing, seasonal access on NFSR 391 was inadequate for a year-round development of even the first phase of the then-proposed development. That decision was upheld in *Wolf Creek Ski Corp. v. Bd. of County Comm'rs of Mineral County*, 170 P.3d 821 (Colo.App. 2007). The applicant states that historic access or rights of access are not adequate. 36 CFR 251.112(b) In consideration of the applicant’s request and the particular circumstances of the situation, including the purpose of the original land exchange, the Forest Service must ensure that it provides adequate access over National Forest System lands that will allow the use of the private land property within the reasonable range, pursuant to ANILCA.

CONCLUSION

Based on the review of your objection, the EIS, and project record, I find no violation of law, regulation or policy. Your suggested remedies and recommendations are denied.

If you have any questions or concerns regarding this response, please contact Nancy Miller at 303-275-5373 or njmillier@fs.fed.us. This response is not subject to further administrative review by the Forest Service or the Department of Agriculture pursuant to 36 CFR 218.11(b)(2).

Sincerely,

/s/ Maribeth Gustafson

MARIBETH GUSTAFSON
Deputy Regional Forester
Reviewing Officer

cc: Dan Dallas, Adam Mendonca, Guy Blackwolf, Amy Waring

